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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY ____ DEPUTY

Carmen Powell
372 Bay Leaf Drive
Chula Vista, Calif 91910

619 420-4204 or 619 253-1271

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Carmen Powell,

Plaintiff,

v.

City of Chula Vista; Chula Vista Police Department; Det Ruth Heinzman; AGT. Anderson; Agt. Oyos: Sgt Cervantes; and Person Entities Unknown, County of San Diego and San Diego County Protective Services Workers, Julie Smith, Nadia Najors, Megan Petfinger; Rebecca Slade, Sophia Sanchez, Lisa Garcia, DOES 1 to 100

Civil Case No. 07 CV 1836 JAH

Complaint Under the Civil Rights Act 42 U.S.C. S 1983

First Amended Complaint

COMPLAINT FOR DAMAGES ARISING OUT OF TORT AND VIOLATIONS OF STATE AND FEDERAL CIVIL RIGHTS, IN EXCESS OF $25,000 IN DAMAGES

JUDGE: JOHN HOUSTON

DEPT 11

JURISDICTION AND VENUE

This action for damages arise under the laws of the United States of American, in particular Title 42 of the United States Code sections 1983, 1985 and 1986. This court has subject matter jurisdiction under 28 United States Code section 1331. Venue is proper in this judicial district under pertinent law, including, 28 United States Code sections 1391 (b), (c).

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the report, my children were witness to, however there was and never were any such statements by my children made to any social worker or the police, because it never happened. When CPS realized that they did not have grounds to remove my children they never sought a court order to remove, they simply illegally seized my children without a warrant the old fashion way by bringing tohe police to my home to remove me the legal parent and then have the children police turn my children over to CPS......**this is how they got my children.**

Defendant: **Julie Smith,** resides in San Diego, County, and is employed as a Sr Protective Social Worker, **this** defendant is sued in her (x) individual (x) official capacity. Explain how this defendant was acting under color of law: Julie Smith knowing offered perjured testimony, fabrication of evidence, failed to disclose exculpatory evidence, coercion , falsifying a child's statement. **Julie Smith, watched on the other side of a two way window during a video tape interview and filed a fabricated document as to what my child had said during the video tape interview at Children's Hospital with LCSW, Deborah Davies. Someone turned the volume down with malicious intent fabricated the statement of a special needs child, and called the statement a whisper. Julie Smith submitted to a court of law that my daughter leaned over and whispered or quietly stated "something bad happen in that house and Mom would get mad if I tell". This is a totally false statement during my daughters taped interview. I watched in horror as my child begged for me, my daughter consistently told representatives of this agency and others that she was happy and safe at home and that my mentally ill husband, Larverne Wilkerson, was a liar. Julie Smith, conspired with Deborah Davies, LCSW to intentionally and knowingly file fabricated document with the court Under Penalty of Perjury.**

Defendant: **Nadia Najors,** resides in San Diego, county, and is employed as a Protective Social Worker II, this defendant is sued in her (x) individual (x) official capacity. Explain how this defendant was acting under color of law: Nadia Najors, failed to conducted a thorough investigation into false allegations of abuse and as a result she presented knowing false statements used in a court of law under penalty of perjury. In the documents she submitted she lied as to what my children said, she intentionally withheld exculpatory information/evidence, lied in statements as to what she saw in my home, withheld exculpatory information regarding my childs behaviors while in my care, she was told that my child was a happy and loving child, which represented a positive state of mind and did not fit the picture nor behaviors of a child that was being abused, so she intentionally withheld this information. Upon the conclusion of her inquiry she concluded that she did not have grounds to remove my children. Even after the physical examination conducted by nurse Diana Chase at Children's Hospital. Her investigation also included statements provided by my children and I that **there was no domestic violence in our home, but this information was withheld from court documents.** Nadia Najors, stood in my livingroom along with officers from the Chula Vista Police Department and witnessed my arrest for domestic violence and said nothing, knowing all along that she had my childrens statements and that my children never witnessed DM, this was in fact intentional to withhold this information. Nadia Najors, **witnessed and assisted the Chula Vista Police Department in taking my three minor children into custody. My children were happy, playing at home, not injured and I still see the looks on their frightened little faces as I was taken out of my home.**

Nadia Najors, said she had no grounds to remove my children. In addition, there was no warrant, no injuries, no exigent circumstances and no immenant danger, my babies my children were happily playing at home when the police arrived with Nadia Najors.

Defendent: Megan Petfinger, resides in San Diego, county, and is employed as a Protective Social Worker, this defendant is sued in her (x) individual (x) official Capacity. Explain how this defendant was acting under color of law. Megan Petfinger, conducted an investigation lied in court documents. Megan Petfinger, put me in the Child Abuse Index using old documented scars that were on my daughter when she came to my home as a foster child with old documented scars. She knowing withheld exculpatory information and statements and initiated or lied to achieve or gain a personal advantage to lay a foundation for taking my children, since there was no injury old documented scars were used and a darkened photo, the record shows old documented scars from September, 2001, she attributed these old injuries to me. Megan Petfinger, met me at Children's Hospital and introduced me to a Dr. Chase, which later on I found out through my own investigation that there was never a Dr. Chase.

Defendant: Rabecca Slade, resides in San Diego County, and was as Senior Protective Social Worker, This defendant is sued in her (x) individual and (x) official capacity. Explain how this defendant was acting under the color of law: She consistently lied in court documents to gain an unfair advantage in court. In addition, she knowing lied about her telephone conversation with my daughter's treating doctor of almost 3 years and lied in court documents in order to prevent my child from seeing her doctor who was treating and prescribing her medication without any side effects or problems. Rebecca Slade, used her position to submit falsified documents knowing that there was no Dr. Chase and knew that I did not cause these old scars. Rebecca Slade, knew that Larverne Wilkerson was mentally ill and lied about his statements. Rebecca Slade, intentionally lied in court testimony and court documents she reports that Nurse Diana Chase and told the court that nurse Chase was a doctor and Child Abuse Expert, she withheld information that my children were crying and suffering this information was never brought forward to the court by the social workers or minors council Carolyn Levenburg, who has left the case, due to conflict of interest, failed to represent my children and withheld exculpatory information, after her interview with Larverne Wilkerson, who told her that he lied about his report.

Defendant: **Ruth Heinzman,** resides in San Diego County, and is employed as a Detective. with the Chula Vista Police Department. This defendant is sued in her (x) individual (x) official. Explain how this defendant was acting under color of law. Det. Heinzman, intentionally fabricated , intentionally failed to disclosed exculpatory evidence, lied in court documents regarding interview statement with minor child E. Powell, video tape shows that child had no injuries to her hands or body, video tape shows that child's statement was that she was happy and safe at her home, that Larverne was lying, the child stated that she was not treated different, that she was loved the same by me, but not by Larverne, that she got a time out for 5 minutes, was only hit on the arm with my mom's hand, Det. Ruth Heinzman, failed to conduct an investigation and to disclose exculpatory evidence. Lied about injury to my child's hand(s), even though she completely strips and examines my daughter at the police department, including having my child drop her pants and her panties. With absolutely no mention of or observing injury to my child's hands, nor did my child every state that she was hit with a belt or cord causing injury, this is a totally made up story, to hold onto my children. My child had just been seen at Children's Hospital, if she would have had injury that would have constituted a new injury and Det Heinzman did not photograph her hands because it is a total fabrication. There is a video tape interview of myself and my daughter and the court had ordered that this evidence be turned over as part of discovery in 2006, however, the copies of the taped interview was useless mostly a blank, my attorney obtained subsequent copies and those were blank or with a blue screen with hardly any sound. The Chula Vista Police Department took me to jail on a false arrest, stating that my estranged husband and I were involved in domestic violence which was absolutely not true, and Det. Heinzman states in the video tape interview, that "she does not care about Larverne". The video tapes were in the care and custody of the Chula Vista Police Department and did not become viewable, until after they agency got permission to do another taping in April, 2007 then poof!, the tapes became viewable and suddenly had sound, these tapes were in the care and custody of the Chula Vista Police and County Council.

Defendent: Agt Anderson, resides in San Diego county, and is employed by the Chula Vista Police Department, she was the one who entered my home with many others, who when I opened the door all these people started running around my house, even up the stair case with black bags. Nadia Najors was with the police and my three minor children, two with special needs ******** E. Powell 11/24/97 SN, *******

M. Powell 07/24/03 SN and ********A. Powell 06/03/00, were playing at home with their video games. Agt Anderson, told me that I was under arrest for two counts battery to a spouse and threats. At no time did they mention my daughter or abuse, nor did they ask me to search my house, it was later after I got out of jail that I found out that they had searched my home. To this day I do not know what they were looking for, they removed medical records of my children, exculpatory and never returned and they even took my purse from my home, according to Agt Anderson, for safe keeping. Larverne Wilkerson, had no injuries my children were fine and I told the police to turn my children over to their older brother, they took photos of my home, of course they did not photo the wall of the pictures, they did take pictures of the family table, and moved furniture and items in my home, however clearly showed the beds, and there was no basinette in my home as Nadia Najors lied about in court.

Defendant: SGT Cervantes, resides in San Diego County, and is employed by the Chula Vista Police Department, he was the supervisor in charge, according to court documents there were so many people at my home and I was handcuffed my children were frightened and the police certainly could have asked me, "did you hit your husband?" and they certainly could have asked my children. The accuser was not there and I had never, ever touched or threatened this man nor has he ever touched or threatened me. But it was soon clear to me that my arrest was never about domestic violence, especially after all charges were dropped and I was released 4 (four) days later, not excepted by the DA's office, but my arrest had everything to do with the seizure of my children. I begged the police to turn my children over to their older adult brother, who had no allegations against him. They did call my older son to pick up his teenage sister, she was not removed, she would of course be much harder to manipulate. Although, all charges were dropped and I was released from jail, Child Welfare Services still hold my children for over a year attempting to get them to admit to abuse that never occurred.

Defendant: Deborah Davies, is a LCSW, resides in San Diego, County, and is employed at Children's Hospital, this defendant is sued in her (x) individual (x) official capacity. Explain how this defendant was acting under color of law. Deborah Davies, prepared a typed written statement of the evidentiary interview of my daughter. She lied and supported Julie Smith's false statement, she falsifed my daughters statements by stating things that she never said, taking her statements completely out of context, discribed her as guarded and combative, which was a fabrication, my child was cooperative, polite and talkative, however she was not saying what was obviously wanted, so her statements were falsified. My daughter continued to say that she was happy with her mom, and that she misses her mommy, that Angelica is crying, am I ever gona see my mom again, how many more days, why don't you people listen to me, I hate Larverne he's lying and he hurts my Mom, I miss my family.

Defendant: Carolyn Levenburg, resides in San Diego County, and is employed as Minors Council the San Diego County Alternate Public Defenders Office, this defendant is sued in her (x) individual (x) official Capacity. Carolyn Levenberg to represent my children by not doing an investigation into the matter independant of the agency, she simply realied on the agency's report. Ms Levenberg, interviewed Larverne Wilkerson and he provided her with a detailed typed statement telling her that he had lied, informed her of his mental illiness, told her he was not afraid of me and that he did not wish to speak with the agency because they lie about what he has said. Ms Levenberg, stated that she would take this information to the court on behalf of the children, however the statement was turned over to the agency and was never brought forward at any court hearing during the time that Ms Levenberg was representing my children. Ms Levenberg, stated in court "the neighbors are talking the neighbors are talking you honor", never indicating what the neighbors were say, however leaving the inference. My neighbors will testify on both sides that they only saw happy children at play and heard happy sounds coming from my home.

Defendant: Rommel Cruz, resides in San Diego County and is employed as parents council, through the San Diego County Alternate Public Defenders Office, and is sued in his (x) individual (X) official capacity. Rommel Cruz was the attorney assigned to represent me that parent in this matter, he failed to inform me of my rights in dependency court. Because, the agency had no grounds to hold onto my children, they requested a 4 week continuance in Sept, 2006 and Mr. Cruz, almost immediately jumped up and said "we agree Your Honor", clearly not a conversation that he had with me and clearly he knew that I wanted my children. I was told not to speak, however I did say to the judge, "but Your Honor they had no ground to take my children". Almost a year later, I learned why he made that statement and it is because of the rules of court, that if the agency has not sustained the petition within 48 hours the children must be returned unless the parent agrees to the continued detention. Clearly this statement was not made in the interest of me and that was who Mr Cruz was representing, however this action was clearly for the agency and this did substantial harm to me and my children, because I would never agree to any such action and the court simply ignored me and granted a continuance.

C. Causes of Action (You may attach additional pages alleging other cause of action and the facts supporting them if necessary.)

The following Civil Rights have been violated:

Plaintiff was deprived of her right to procedural due process because the intentional use of fraudulent evidence in the procedures used by the state denied her the right to fundamentally fair procedures a right included in Procedural Due Process. Plaintiff was detained four days, falsely arrested, claiming **D.V. in front of children,** supporting documents show that Social Worker Nadia Najors came with the Chula Vista Police and had my childrens statements **"there is no domestic violence in our home", The police used the D.V. pretext to seize my children without a warrant, minus exigent circumstance. Nadia Najors, Social Worker conducted an investigation, including me taking my daughter to Children's Hospital for a complete physical, and according to Nadia Najors, to Det Ruth Heinzman, "we did not have enough grounds to remove any of the children" Detective Ruth Heinzman, states in her report "Domestic Violence Supplemental" not only did they already have my childrens statement, "the police never asked my children about domestic violence", and they only spoke with one child at the Police Department and that was E. Powell, a fabricated statement used to seize my children under false pretext, which deprived my family of our 4th & 14th Amendment Right, Due Process of Law, Post-deprivations remedies does not provide due process.**

The defendants in their action conspired in their official duty to seize my children without regards to the law, they committed a false arrest, fraud and falsified documents to support their theory and to deprive my children and myself from our Civil and Constitutional Rights, they basically called my children liars because they did not like what their investigation brought forth, so through a false arrest lies and manipulations they seized my children, through illegal means in their official capacity, depriving our family to exist without inference from the government, they isolate and

conspired to take my children and got other licensed government employees to lie and falsify document the medical condition of my child, Diana Chase nurse gave a false statement, Debra Davies, Dr. Harinder Grewal, Dr. Morteza Mirkarimi all played a significant roll in the maltreatment of my children and supported these defendants by providing them with false documents and writings to submit to the court. **By doing the above, the defendants each and every one of them conspired and violated the Plaintiff's Civil and Constitutional Rights..**

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar Facts involved in this case? **NO**

2. Have you previously sought and exhausted all forms of informal or formal relief from The proper administrative officials regarding the acts alleged in Part C above. **YES**

If your answer is "Yes", briefly describe how relief was sought and the results. **Attached are letters sent to everyone one involved and basically, I was laughed at and told by the Police "we have immunity", my letters go unanswered and the lies and manipulation continue and my children and my family is being destroyed. No matter what, I am going to continue to fight for my children and I believe that I have shown not only, did they not have grounds to take my children, they lied with a false arrest to seize my children. No matter how many people tell me that "no one cares about my beautiful children", I am going to pursue every legal avenue to have a fair trail by jury and I believe that I have shown that this is the proper court for my case to be heard. You are treated as if you have no rights and perjury seems to be the weapon of choice and the same tactics are used over and over and it seems that the courts simply go along and this is destroying peoples children and their families.**
I immediately wrote to Jean Shepard, Director and informed her of what these employees were doing, and this agency just continued because then it clearly became about something

else....there was already documents under penalty of perjury and a false arrest. I filed a complaint with the Chula Vista Police Department, and Sgt Cervantes laughed and said "we have immunity, they have changed their story, and there was never an investigation and the video tape interview of myself, my daughter and my estranged husband was ordered by the court to be turned over, and it's a tape that is basically useless, you can only see a blue screen, you can't hear and of course they did have a viewable tape. I have not seen my special needs daughter for over a year, she was immediately cut off from every family member including to two younger children until January, 2007. On February 1, 2007, I was advised by council to except the settlement agreement by the agency that all charges would be dismissed, **if I stipulate to certain findings, that my daughter gained weight, their was a lock on the fridge, no kitchen table and altercations between myself and my husband**, and that I would never have to deal with Social Worker Julie Smith again and that I would immediately receive a Reunification Plan, and the moment that I did, **now this agency believes that they have cover from the courts where they fill so comfortable lying. They filed another petition with the same charges, of course they dismissed the other petitions. Recently I just found out that there are** CALIFORNIA RULES OF COURT, THAT PARENT AND PARENTS COUNCIL ARE TO RECEIVE PETITIONS 10 BUSINESS DAYS BEFORE ANY HEARING AND THE COURT IS TO VERIFY THE SAME, **I HAVE NEVER RECEIVED A PETITION PRIOR TO ANY HEARING AND THE COURT HAS NEVER ASKED THE SAME, AS A MATTER OF FACT, THE COURT (MUST) READ THE PETITION, HOWEVER I HAVE NEVER BEEN TOLD THIS BY ANY ATTORNEY OR JUDGE, AND THEY SIMPLY ASK THAT THE READING OF THE PETITION BE WAVED. ALSO, AT THE FIRST HEARING ON AUGUST 22, 2006, I PLEAD NOT GUILTY AND THE AGENCY LATER ASKED FOR A CONTINUANCE OF 4 WEEKS, AND MY PUBLIC DEFENDER IMMEDIATELY JUMPED UP AND SAID "WE AGREE YOUR HONOR", AND I WAS SHOCKED, THE JUDGE ASKED ME NOTHING, SO I SAID, "BUT YOUR HONOR THEY HAD NO GROUNDS TO TAKE MY CHILDREN, AGAIN I STATED, YOUR HONOR THEY HAD NO GROUNDS TO TAKE MY CHILDREN". BECAUSE NOW I CLEARLY UNDERSTAND WHAT HAPPENED, AND IT IS CLEAR WHY THE JUDGE IGNORED ME AND I BELIEVE THAT MY STATEMENT, THOUGH NOT WHAT A**

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I am over the age of 18 and reside in the state of California and I am signing under Penalty of Perjury on this 20th day of May, 2008

Carmen Powell

See attached supporting documents: UNDER SEAL